

**WORKFORCE DEVELOPMENT DEPARTMENT[871]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby amends Chapter 26, “Contested Case Proceedings,” Iowa Administrative Code.

The amendments to subrules 26.14(6) and 26.14(7) and the rescission of subrule 26.14(9) provide that a party who appeals a decision and then does not participate in the appeal hearing may have the appeal dismissed at the discretion of the presiding officer. The appealing party may request to reopen the hearing if that party had good cause for failing to appear.

Notice of Intended Action was published in the October 16, 2013, Iowa Administrative Bulletin as **ARC 1095C**. No public comment was received. These amendments are identical to those published under Notice.

After analysis of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 96.6(3) and chapter 17A.

These amendments will become effective on February 12, 2014.

The following amendments are adopted.

ITEM 1. Amend subrules 26.14(6) and 26.14(7) as follows:

**26.14(6)** In the event that one or more parties which have received notice for a contested case hearing fail to appear at the time and place of an in-person hearing, the presiding officer may proceed with the hearing. If the appealing party fails to appear, the presiding officer may decide the party is in default and dismiss the appeal. The hearing may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

*a.* If an absent party arrives for an in-person hearing while the hearing is in session, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

*b.* If an absent party arrives for an in-person hearing after the record has been closed and after any party which had participated in the hearing has departed, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire *ex parte* as to the reason the party was late. For good cause shown, the presiding officer shall cause notice of hearing to be issued to all parties of record and reopen the record. The record shall not be reopened if the presiding officer does not find a good cause for the party’s late arrival.

**26.14(7)** If a party has not responded to a notice of telephone hearing by providing the appeals ~~section~~ bureau with the names and telephone numbers of ~~its witnesses~~ the persons who are participating in the hearing by the scheduled starting time of the hearing or is not available at the telephone number provided, the presiding officer may proceed with the hearing. If the appealing party fails to provide a telephone number or is unavailable for the hearing, the presiding officer may decide the appealing party is in default and dismiss the appeal as provided in Iowa Code section 17A.12(3). The record may be reopened if the absent party makes a request to reopen the hearing under subrule 26.8(3) and shows good cause for reopening the hearing.

*a.* If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

*b.* If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire *ex parte* as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party’s late response to the notice of hearing.

*c.* Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

ITEM 2. Rescind and reserve subrule **26.14(9)**.

[Filed 12/17/13, effective 2/12/14]

[Published 1/8/14]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/14.